

## Department of the Army, DoD

## § 518.35

(a) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 (reference (g)), that may be cited, used, or relied upon as precedents in future adjudications.

(b) Statements of policy and interpretations that have been adopted by the agency and are not published in the FEDERAL REGISTER.

(c) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(1) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(2) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

### INDEXES

#### § 518.33 “(a)(2)” materials.

(a) Each DoD Component shall maintain in each facility prescribed in § 518.31, an index of materials described in § 518.4, that are issued, adopted, or promulgated, after July 4, 1967. No “(a)(2)” materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this Regulation.

(b) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of “(a)(2)” materials or supplements

thereto unless it publishes in the FEDERAL REGISTER an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in subpart F.

(c) Each index of “(a)(2)” materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

#### § 518.34 Other materials.

(a) Any available index of DoD Component material published in the FEDERAL REGISTER, such as material required to be published by section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms. Army “(a)(2)” materials are published in DA Pam 25–30.

(b) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, “(a)(1)” materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of “(a)(1)” materials are: descriptions of an agency’s central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

## Subpart C—Exemptions

### GENERAL PROVISIONS

#### § 518.35 General.

Records that meet the exemption criteria in the exemption part of subpart C may be withheld from public disclosure and need not be published in the FEDERAL REGISTER, made available in a library reading room, or provided in response to an FOIA request.